

Health Care Financing Administration
Kansas City Regional Office

Market Conduct Examination Report

HMO Missouri, Inc.

Background

Generally, the individual and group market requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) became effective on July 1, 1997.

As of the commencement of the market conduct examination of Blue Cross and Blue Shield of Missouri (BCBSMo) the state of Missouri had not incorporated into Missouri state law provisions and/or requirements that would bring Missouri state law into compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a result, pursuant to Federal Regulations found at 45 CFR 146.184 (b)(2)(I) and 45 CFR 148.200 (b)(1) (since replaced by Federal Regulations found at 45 CFR 150.203(a)), the enforcement of the requirements of HIPAA in Missouri are the responsibility of the Health Care Financing administration (HCFA), primarily, the HCFA Kansas City Regional Office (KCRO).

Utilizing enforcement tools similar to those used by State insurance departments, the HCFA KCRO undertook the responsibility of the enforcement of HIPAA through form review, complaint investigation, and market conduct examinations.

HuffThomas, a regulatory consulting firm, was contracted by HCFA to perform the on-site portion of market conduct examinations of issuers identified by HCFA.

On April 26, 1999, a letter was sent to BCBSMo President, John O' Rourke announcing the examination of BCBSMo and all affiliated companies.

On June 10, 1999 an entrance conference was held at BCBSMo headquarters in St. Louis, Missouri and the examination begun.

Preliminary Examination Findings in Brief

With respect to the guarantee issuance of individual policies to “eligible individuals” as defined at 45 CFR 148.103, HMO Missouri, Inc. utilizes an overall marketing, policy issuance and application process hostile to Missouri residents attempting to exercise their rights as provided for in the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Generally, this process:

1. Withholds access to information regarding guarantee issued policies from consumers attempting to access information through HMO Missouri, Inc.’s marketing web site.
2. Requires applicants to obtain “certifications” from former employers regarding COBRA and/or other continuation, which employers are not legally required to provide.
3. Requires applicants to request information regarding guaranteed available coverage in order to be determined an eligible individual and then to be offered all available coverage options.
4. Significantly reduces agent commissions and excludes agents from “bonus” compensation programs for all sales made to eligible individuals.
5. Delays the effective date of enrollment of eligible individuals, potentially creating gaps in these individuals’ health insurance coverage of up to 13 days.

In addition, HMO Missouri, Inc.’s business practices in the group market do not comply with many of the requirements of HIPAA. Areas of concern identified through the examination include:

1. HMO Missouri, Inc. does not offer coverage to small employers of 26 to 50 employees.
2. HMO Missouri, Inc. significantly reduces agent commissions and excludes agents from “bonus” compensation programs for all sales made to small employers who obtain coverage through the guarantee availability protections of HIPAA (that is, those small employers not eligible for the company’s “preferred rates”).
3. HMO Missouri, Inc. does not provide, or make a reasonable disclosure regarding the availability of, information required to be made available to small employers.
4. HMO Missouri, Inc. promotes and operates wellness programs which illegally discriminate against participants based on health status-related factors.

With respect to the issuance of certificates of creditable coverage to individuals ceasing coverage with HMO Missouri, Inc., the company creates the potential for unnecessary problems by issuing certificates which do not clearly disclose the name of the issuer.

Company History

HMO Missouri, Inc. was incorporated by Blue Cross and Blue Shield of Missouri (BCBSMo), the Company's ultimate parent, in Missouri on May 28, 1987, under the name BlueCHOICE, Inc. BlueCHOICE, Inc. received its Certificate of Authority on December 2, 1987, and began operations in January 1988 under the Individual Practice Association form of health plan. The Company operates as a Health Maintenance Organization under Sections 354.400 to 354.550 RSMo. The Company is licensed to do business in Missouri and Illinois. The Articles of Incorporation were amended by a Certificate of Amendment, dated December 22, 1987, to rename the Company to HMO Missouri, Inc. On January 11, 1988, a "Registration of Fictitious Name" was filed with the Secretary of State to allow the Company to do business as BlueCHOICE.

In 1994, under a corporate reorganization plan, BCBSMo created a for-profit subsidiary called RightCHOICE Managed Care, Inc. (RIT). RIT was organized to own and operate all of the managed health care business of BCBSMo and operates under the name Alliance Blue Cross Blue Shield (ABCBS). BlueCHOICE was one of the BCBSMo subsidiaries transferred to RIT under this reorganization. The stated primary purpose of the reorganization was to provide BCBSMo and RIT access to the capital markets. Following SEC and Missouri regulatory approval, there was an initial public offering of RIT capital stock in August 1994. The stock is traded on the New York Stock Exchange. Approximately 20% of the stock is in public hands with the remaining 80% of the capital stock still held by BCBSMo.

Subsequent to the reorganization, the Missouri Department of Insurance (DOI) brought suit against BCBSMo alleging that the reorganization and public offering constituted a *de facto* conversion to a for-profit corporation. (See Report of Examination of BCBSMo for further information).

Affiliated Companies

BlueCHOICE was a wholly-owned subsidiary of BCBSMo before being transferred to RIT in 1994. BCBSMo, a Health Services Corporation, is the ultimate parent of a holding company system that consists of five insurance companies (including two health maintenance organizations (HMOs)) and nine non-insurance companies. BCBSMo owns 80.33% of RIT, a publicly traded company on the New York Stock Exchange, which in turn owns 100% of BlueCHOICE. RIT does business as Alliance Blue Cross Blue Shield (ABCBS) and either directly, or indirectly, owns the other insurance companies, excluding BCBSMo, in the insurance holding company system.

All subsidiaries are 100% owned except for:

- BCBSMo owns 80.33% of RIT.
- The EPOCH Group L.C. is owned 50% by RIT and 50% by Blue Cross and Blue Shield of Kansas City.
- HealthCare Interchange, Inc., Diversified Life Insurance Agency is owned 45% by RIT.

Management Structure

The governing body of HMO Missouri, Inc. is its Board of Directors who are elected by the shareholders at the annual meeting of the shareholders of the corporation. Each director is elected to serve for the term of one year and until his successor is elected and qualified. The Board consists of eight persons. The directors are authorized to appoint from their number an Executive Committee of not less than three members, who are vested with the powers of the Board when the Board is not in session. The directors are to appoint an Advisory Committee composed of enrollees in the corporation who have the opportunity to participate through meetings and discussions with company officials regarding major policy decisions.

The officers of the corporation consist of a Chief Executive Officer, a President, a Vice President, a Secretary and a Treasurer, and such other officers and agents as from time to time may be chosen by the Board. The Board elects a Chairman from among its members. The Chief Executive Officer is subject to the power of the Board of Directors, and shall have the general management of the business of the corporation with the power and duty to direct, control and supervise its operation and personnel. The President shall be the Chief Operating Officer of the corporation and shall report to the Chief Executive Officer. The President and the Chief Executive Officer shall be members of the Board and the President shall preside at all meetings of the Board unless the Board should elect another director to be Chairman of the Board.

The Board of Directors and officers serving as of December 31, 1998 are the following:

John A. O'Rourke	President and Chairman of the Board
Judith A. Dawson	Secretary
Lawrence P. Glascott III	Treasurer
Ronald G. Evens M.D.	
William J. Schicker	
Levi W. Trammell M.D.	
Roger B. Porter Ph. D	
Gloria W. White	

Insurance Products

HMO Missouri, Inc. is a Federally qualified health maintenance organization under Title XIII of the Public Health Service Act, licensed to transact business in Missouri and Illinois. The Company offers BlueCHOICE for Individuals and BlueCHOICE Value, BlueCHOICE Value Plus, Blue CHOICE POS and HealthNet Blue POS for Groups.

HMO Missouri, Inc. is an Individual Practice Association model network, through which the Company contracts directly with local providers for plan members' health services. The Company offers services to approximately 161,000 members in 70 counties in Missouri, two counties in Illinois and the City of St. Louis. The

BlueCHOICE network has contractual arrangements with approximately 3,700 physicians and 60 hospitals.

HMO Missouri, Inc. supports the following HMO and POS products:

- BlueCHOICE HMO Group
- BlueCHOICE POS and HealthNet Blue POS
- BlueCHOICE Individual
- BlueCHOICE Senior (Medicare Risk HMO product)
- BlueCHOICE Medicaid Plus, a Medicaid HMO product discontinued 2/28/98

Use of General Agents, Managing General Agents and Third Party Administrators

HMO Missouri, Inc. does not use General Agents (GAs) or Managing General Agents (MGAs) as a distribution system for its products. Licensed agencies, agents and brokers are used for the external distribution system. Effective 1991, HMO Missouri, Inc. was licensed as a third party administrator (TPA) with the State of Missouri Department of Insurance.

Exception #1 - - Violation of 45 CFR 148.120

General Subject Area(s) - - Guaranteed Availability – Actively Marketed

Background

HMO Missouri, Inc. (d.b.a. BlueCHOICE) offers one (1) individual product in the Missouri health insurance marketplace.

HMO Missouri, Inc. is therefore an issuer offering health insurance coverage in the individual market and is required pursuant to the requirements of Federal Regulations found at 45 CFR 148.120 to offer the product on a guaranteed available basis to “eligible individuals” as defined at 45 CFR 148.103.

HMO Missouri, Inc. markets its one individual product in part through the Alliance Blue Cross and Blue Shield web site. However, no information regarding the availability of BlueCHOICE to eligible individuals is included in the web site.

Specific Violation

- **HMO Missouri, Inc. does not inform consumers of the availability of BlueCHOICE coverage to eligible individuals through its marketing web site.**

Federal Regulations found at 45 CFR 148.120(a)(1) require that policy forms available for guaranteed available to eligible individuals must be actively marketed. BlueCHOICE is not marketed to eligible individuals through the web site, but is marketed to other individuals through the site.

Adverse Impact to Missouri Consumers

- “Eligible individuals” utilizing the HMO Missouri, Inc. marketing web site are denied the complete and equal marketing information provided to other individuals.

Recommendation(s)

- HMO Missouri, Inc. should add information regarding the availability of BlueCHOICE coverage to eligible individuals to its marketing web site.

Background

HMO Missouri, Inc. is an issuer offering small group health insurance coverage in the group market and is required pursuant to the requirements of Federal Regulations found at 45 CFR 146.150 (a)(1) to offer the product on a guaranteed available basis to all small employers as defined at 45 CFR 144.103. Generally, a small employer as defined at 45 CFR 144.103 is one who employs 2 to 50 employees.

The advertising provided to and reviewed by the on-site examiners indicates HMO Missouri, Inc. only markets and offers small group coverage to employers with 2 to 25 employees.

Specific Violation

- **HMO Missouri, Inc. does not offer to small employers of 26 to 50 employees small group coverage.**

Federal Regulations found at 45 CFR 146.150(a) and 45 CFR 146.150(a)(1) require that “...each health insurance issuer that offers health insurance coverage in the small group market must (1) – *Offer, to any small employer in the State, all products that are approved for sale in the small group market, and that the issuer is actively marketing, and must accept any employer that applies for any of those products...*”(emphasis added).

While the examiners found no evidence to indicate HMO Missouri, Inc. is refusing to accept any employer meeting the definition of a small employer found at 45 CFR 144.103 (in fact, examiners were provided company documents which would indicate that HMO Missouri, Inc. is aware of the requirements), none of the advertising provided and reviewed by the examiners makes an offer of coverage to these small employers. All the advertising provided references to “Small Group Coverage” as being available to small employers with 2 to 25 employees.

Adverse Impact to Missouri Consumers

- Missouri small employers of 26 to 50 employees are denied information that small group coverage is available to them and their employees on a guaranteed available basis.

Recommendation(s)

- HMO Missouri, Inc. should revise its marketing materials to offer small group coverage to all small employers with 2 to 50 employees.

Exception #3 - - Violation of 45 CFR 146.150(a)

General Subject Area(s) - - Guaranteed Availability – Small Employers – Reduction in Agent Commissions

Background

HMO Missouri, Inc. reduces compensation to agents and brokers selling guaranteed available coverage to small employers.

Specific Violation

- **HMO Missouri, Inc. significantly reduces the commissions paid to agents and brokers marketing small group coverage to small employers of 2 to 50 employees if these groups are not eligible for HMO Missouri, Inc. “preferred rates.” In addition, such sales are excluded from consideration in “bonus” compensation programs.**

HMO Missouri, Inc. currently reduces the 1st year and renewal commissions to agents and brokers for “HIPAA groups of 2 to 50,” that is, groups not eligible for HMO Missouri, Inc.’s preferred rates, in the following manner:

Annual Premium	1 st Year & Renewals (non-HIPAA)	1 st Year & Renewals (HIPAA Groups 2 – 50)
First \$15,000	10.00%	7.00%
Next \$15,000	7.50%	5.20%
Next \$20,000	5.00%	3.40%
Next \$50,000	2.00%	1.40%
Next \$150,000	1.00%	.70%
Over \$250,000	.50%	.30%

In addition, HMO Missouri, Inc. “...will not count HIPAA Guarantee premium or contracts” in the premium calculation for the “Blue Ribbon Group Bonus” Program.

Federal Regulations found at 45 CFR 146.150(a) and 45 CFR 146.150(a)(1) require that “...each health insurance issuer that offers health insurance coverage in the small group market must (1) – Offer, to any small employer in the State, all products that are approved for sale in the small group market, and that the issuer is actively marketing, and must accept any employer that applies for any of those products...”

In Program Memorandum 98-01 HCFA clarified that:

“If an issuer pays agents less through all forms of agent compensation (Commissions, bonuses, or other rewards) for high risk individuals and groups than it pays for those with better risk profiles, this act constitutes a circumvention of the insurance reform provisions of HIPAA.”

Program Memorandum 98-01 goes on to state:

“The guaranteed issue provisions of the statutes generally require that issuers’ normal conduits for receiving applications and offering coverage to be open to HIPAA-eligible individuals or small employers. Issuers commonly use agents as an important part of their marketing and distribution system, and ordinarily compensate these agents by paying commissions on the coverage they sell. Commission payment is included among the costs used to calculate the premium rate for a given form of coverage. For an issuer to modify the normal operation of its marketing and distribution system so as not to attract its fair share of the high risk individuals and small groups protected by HIPAA does not accord with the intent of the statutes to protect these individuals and groups. HCFA will carefully monitor such practices and will take appropriate enforcement action to the extent practices are found, under the regulations, to constitute a failure to offer coverage.”

HCFA further clarified the requirements of 45 CFR 146.150 in Appendix A of 45 CFR Part 150, Subpart C, I *Basis for imposition of Civil Monetary Penalties – Action in the Group Market*, j. (5) which describes the following practice as a failure to comply:

“Sets agents’ commissions so low as to discourage agents from marketing policies to, or enrolling, these groups so that a failure to offer coverage results.”

Adverse Impact to Missouri Consumers

- Missouri small employers of 2 to 50 employees may be denied information regarding the guaranteed availability of small group coverage to them and their employees by HMO Missouri, Inc. agents and brokers who are required to work under a compensation system which makes the sale of such products less profitable to them.

Recommendation(s)

- HMO Missouri, Inc. should either:
 1. Discontinue the practice of reducing agent and broker compensation for sales made to small employer “HIPAA groups of 2 to 50” or;
 2. Provide evidence that this practice does not constitute a failure to offer as outlined in the aforementioned regulations and Program Memorandum.

Exception #4 - - Violation of 45 CFR 148.120

General Subject Area(s) - - Guaranteed Availability – Individual Coverage – Reduction in Agent Commissions

Background

HMO Missouri, Inc. reduces compensation to agents and brokers selling guaranteed available individual coverage to eligible individuals.

Specific Violation

- **HMO Missouri, Inc. significantly reduces the commissions paid to agents and brokers marketing individual coverage to eligible individuals. In addition, such sales are excluded from consideration in “bonus” compensation programs.**

HMO Missouri, Inc. currently reduces the 1st year and renewal commissions to agents and brokers for individual coverage “HIPAA-required offerings” in the following manner:

Product	1 st Year Commission (Percent of Premium)	Following years policy service fee (Percent of Premium)
BlueCHOICE (non-HIPAA)	12.00%	8.00%
BlueCHOICE (guarantee issued)	6.00%	4.00%

In addition, HMO Missouri, Inc. will not count sales and premiums generated by any “HIPAA-required individual plans” towards the “Individual Markets Bonus” Program.

Federal Regulations found at 45 CFR 148.120(1) require, with respect to an eligible individual, that an issuer “May not decline to offer coverage or deny enrollment under any policy form that it actively markets in the individual market...”

In Program Memorandum 98-01 HCFA clarified that:

“If an issuer pays agents less through all forms of agent compensation (Commissions, bonuses, or other rewards) for high risk individuals and groups than it pays for those with better risk profiles, this act constitutes a circumvention of the insurance reform provisions of HIPAA.”

Program Memorandum 98-01 goes on to state:

“The guaranteed issue provisions of the statutes generally require that issuers’ normal conduits for receiving applications and offering coverage to be open to HIPAA-eligible individuals or small employers. Issuers commonly use agents as an important part of their marketing and distribution system, and ordinarily compensate these agents by paying commissions on the coverage they sell. Commission payment is included among the costs used to calculate the premium rate for a given form of coverage. For an issuer to modify the normal operation of its marketing and distribution system so as not to attract its fair share of the high risk individuals and small groups protected by HIPAA does not accord with the intent of the statutes to protect these individuals and groups. HCFA will carefully monitor such practices and will take appropriate enforcement action to the extent practices are found, under the regulations, to constitute a failure to offer coverage.”

HCFA further clarified the requirements of 45 CFR 146.150 in Appendix A of 45 CFR Part 150, Subpart C, II *Basis for imposition of Civil Monetary Penalties – Actions in the Individual Market*, a. (3) which describes the following practice as a failure to comply:

“Sets agents commissions for sales to eligible individuals so low as to discourage agents from marketing policies to, or enrolling, these individuals so that a failure to offer coverage results.”

Adverse Impact to Missouri Consumers

- Missouri eligible individuals may be denied information regarding the guaranteed availability of individual coverage to them by HMO Missouri, Inc. agents and brokers who are required to work under a compensation system which makes the sale of such products less profitable to them.

Recommendation(s)

- HMO Missouri, Inc. should either:
 1. Discontinue the practice of reducing agent and broker compensation for sales made to eligible individuals; or
 2. Provide evidence that this practice does not constitute a failure to offer as outlined in the aforementioned regulations and Program Memorandum.

Exception #5 - - Violation of 45 CFR 146.160

General Subject Area(s) - - Disclosure of Information

Background

When offering small group coverage, issuers are required to make a reasonable disclosure to small employers regarding the availability of specific types of information, and when requested by a small employer, provide the aforementioned information.

Specific Violation

- **HMO Missouri, Inc. does not provide, or make a reasonable disclosure of the availability of, information required to be provided to small employers seeking small group coverage.**

Federal Regulations found at 45 CFR 146.160 state:

(a) *General rule.* In connection with the offering of any health insurance coverage to a small employer, a health insurance issuer is required to—

(1) Make a reasonable disclosure to the employer, as part of its solicitation and sales materials, of the availability of information described in paragraph (b) of this section; and

(2) Upon request of the employer, provide that information to the employer

(b) *Information described.* Subject to paragraph (d) of this section, information that must be provided under paragraph (a)(2) of this section is information concerning the following:

(1) Provisions of coverage relating to the following:

(i) The issuer's right to change premium rates and the factors that may affect changes in premium rates.

(ii) Renewability of coverage.

(iii) Any preexisting condition exclusion, including use of the alternative method of counting creditable coverage.

(iv) Any affiliation periods applied by HMOs.

(v) The geographic areas served by HMOs.

(2) The benefits and premiums available under all health insurance coverage for which the employer is qualified, under applicable State law. See § 146.150(b) through (f) for allowable limitations on product availability.

(c) *Form of information.* The information must be described in language that is understandable by the average small employer, with a level of detail that is sufficient to reasonably inform small employers of their rights and obligations under the health insurance coverage. This requirement is satisfied if the issuer provides each of the following with respect to each product offered:

- (1) An outline of coverage. For purposes of this section, outline of coverage means a description of benefits in summary form.
- (2) The rate or rating schedule that applies to the product (with and without the preexisting condition exclusion or affiliation period).
- (3) The minimum employer contribution and group participation rules that apply to any particular type of coverage.
- (4) In the case of a network plan, a map or listing of counties served.
- (5) Any other information required by the State.

(d) *Exception.* An issuer is not required to disclose any information that is proprietary and trade secret information under applicable law.

HMO Missouri, Inc. indicated to the on-site examiners that while they "...do not have a single disclosure document for employers" the information "...is included in the various materials that are given to prospective groups as part of the proposal process."

However, the list provided by HMO Missouri Inc. describing where and how the required information described at 45 CFR 146.160(b)(1)(i) through 45 CFR 146.160(b)(1)(v) is provided to small employers indicates that some of the information is provided either through the group agreement or the group certificate. The types of information found in these agreements and/or certificates include:

1. The issuer's right to change premium rates and the factors that may affect changes in premium rates.
2. Renewability of coverage.
3. Any preexisting condition exclusion, including use of the alternative method of counting creditable coverage

Based on the information provided the examiners, it would not appear that the aforementioned required information is provided to small employers until the group agreement and/or certificates of coverage are issued. Such a disclosure would not comply with the requirements of 45 CFR 146.160 given disclosure of the

availability of the information, and if requested, the actual information, is intended to be available prior to the sale of the coverage.

Adverse Impact to Missouri Consumers

- Missouri small employers do not receive important information regarding premium rates, renewability of the coverage they are considering purchasing, and preexisting condition exclusions until the coverage is actually purchased from HMO Missouri, Inc.

Recommendation(s)

- HMO Missouri, Inc. should revise its solicitation and sales materials to make a reasonable disclosure of the availability of the information described in Federal Regulations found at 45 CFR 146.160(b) and develop materials to disclose this required information to small employers prior to issuance of the group agreements and/or the group certificates.

Exception #6 - - Violation of 45 CFR 148.120(a)(1)(ii)

General Subject Area(s) - - Guaranteed Availability – Failure to issue promptly

Background

HMO Missouri, Inc. enrolls individuals into its individual product, BlueCHOICE, with effective dates of the first (1st) or the fifteenth (15th) of the month following approval of the application. The KCRO of HCFA received two complaints regarding this practice from individuals seeking to obtain guaranteed available coverage pursuant to their status as an “eligible individual” as defined in Federal Regulations found at 45 CFR 148.103.

The first of the two complainants, (who wished to remain anonymous to HMO Missouri, Inc.) did not report to HCFA any claims denied as a result of the “1st and 15th only” enrollment practice. The second complainant had a significant number of pregnancy claims denied totaling approximately \$8,500. In addition, the Missouri Department of Insurance informed the HCFA KCRO that agency had received complaints regarding this practice as well.

Generally, in order to meet the definition of an “eligible individual,” individuals must not have, or have access to, any other form of health insurance coverage.

The “1st and 15th only” practice of HMO Missouri, Inc. resulted in both of these complainants’ being required to wait for enrollment into their BlueCHOICE policy until the next 1st or 15th of the month, even though they had been determined an “eligible individual” (and eligible for coverage) prior to those dates (that is, their applications had been approved).

In both of these cases the aforementioned HMO Missouri, Inc. enrollment practice created a period of time where the individuals did not have any health insurance coverage.

The HCFA KCRO pursued these complaints with HMO Missouri, Inc. as a violation of Federal Regulations found at 45 CFR 148.120(a)(1)(ii) which generally requires an issuer to promptly enroll eligible individuals.

After correspondence and discussions between HCFA KCRO and the company, HMO Missouri, Inc. in a letter dated March 26, 1999, agreed to mitigate the violations by discontinuing the practice and paying the claims denied the one complainant. As a result of HMO Missouri, Inc.’s offer to discontinue the practice and pay the claims in question, HCFA agreed not to pursue a Civil Monetary Penalty (CMP) at that time.

HCFA requested the on-site examiners confirm HMO Missouri Inc. had discontinued the practice as represented in its March 26, 1999 letter.

Specific Violation

- **HMO Missouri, Inc. continues to violate the requirements of Federal Regulations found at 45 CFR 148.120(a)(1)(ii) which require an issuer to promptly enroll “eligible individuals” as defined at 45 CFR 148.103.**

Federal Regulations found at 45 CFR 148.120 regarding the “Guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage” state in part:

(a) *General rule.* Except as provided for in paragraph (c) of this section, an issuer that furnishes health insurance coverage in the individual market must meet the following requirements with respect to any eligible individual who requests coverage:

(1) May not decline to offer coverage or deny enrollment under any policy forms that it actively markets in the individual market, except as permitted in paragraph (c) of this section concerning alternative coverage when no State mechanism exists. An issuer is deemed to meet this requirement if, upon the request of an eligible individual, it acts **promptly** to do the following:

- (i) Provide information about all available coverage options.
- (ii) Enroll the individual in any coverage option the individual selects.

(2) May not impose any preexisting condition exclusion on the individual. (emphasis added).

The HMO Missouri, Inc. practice of only enrolling individuals into its individual product, BlueCHOICE, with effective dates of the first (1st) or the fifteenth (15th) of the month following approval of the application violates the requirements of 45 CFR 148.120 when the practice is applied to “eligible individuals” as defined at 45 CFR 148.103.

Specifically, once HMO Missouri, Inc. “approves” an application for guaranteed available coverage, that is, in the case of a guaranteed available BlueCHOICE policy, makes the determination the applicant(s) meets the definition of an “eligible individual” as defined at 45 CFR 148.103, this individual must wait until the next first or fifteenth of the month to be enrolled.

This business practice creates situations in which a BlueCHOICE applicant may be without any form of health insurance coverage for up to 13 days after being determined an eligible individual. It also creates situations where an individual who is trying to arrange for seamless coverage by applying for coverage before their COBRA or other state continuation ends is unable to unless their continuation happens to end on the 1st or the 15th of the month. HCFA’s position regarding

arranging for seamless coverage was outlined in June 1999 - Program Memorandum 99-02. The following is an example to illustrate this point:

Example: An “eligible individual” will exhaust her COBRA continuation of coverage on June 2, 1999. She applies with HMO Missouri, Inc. on May 1, 1999 in order to arrange for seamless coverage. Based on HMO Missouri, Inc.’s current business practice, this individual would not have coverage effective until June 15, 1999 (a 13 day gap in coverage).

In the letter dated March 26, 1999 HMO Missouri, Inc. wrote to HCFA:

“The purpose of this letter is to inform the Health Care Financing Administration (HCFA) that HMO Missouri Inc. will discontinue the practice of enrolling individuals eligible of the BlueCHOICE Individual HIPAA program only on the first and the fifteenth of the month and will process the claims in question...”

However, company documents reviewed by the on-site examiners indicate HMO Missouri, Inc. did not discontinue the practice. The HMO Missouri, Inc. “Marketing Services” document dated 5/20/99 in the subsection entitled “Individual Changes” states with respect to the effective date of coverage for a member which applies for “HIPAA” initially:

“Effective 1st or 15th after corporate receipt date (or based on the date stamp from Individual Markets) for BlueCHOICE”

In addition, the “Application for HIPAA – Required Nongroup Coverage” provided the examiners as a part of the forms currently in use by HMO Missouri, Inc. includes the following provision:

“Check your preferred effective date of coverage:

BlueCHOICE Individual: ___ 1st of month after approval of application or ___ 15th of the month after approval of application

or ___ Later date: * ___/___/___ (day must be 1st or 15th of month)

*If the date you choose cannot be honored, the effective date of your coverage will be as follows:....**BlueCHOICE Individual** – either the 1st or the 15th of the month, after approval of your application.”

Through a memorandum dated August 5, 1999 the on-site examiners requested an informational computer print-out of “...all the HIPAA policies written by BlueCHOICE from 3/26/99 – to date.” (The 3/26/99 date was selected at the request of the HCFA KCRO and corresponds with date of the letter from HMO Missouri, Inc. which indicated the practice in question would be discontinued).

In response to the examiners’ request, HMO Missouri, Inc. provided documents entitled “Non-Update Record Display” representing 71 individuals issued a guaranteed available BlueCHOICE policy after 3/26/99.

The “Non-Update Record Display” print-out sheets contain a variety of data fields. Those fields intended for dates include:

Appl. Birthdate:	Date Released:
Req. Eff. Date:	Corp Rcvd Date:
Date Fulfilled:	Cov. End Date:
Reschedule date:	Effective Date:
App Entered Date:	Pend/Rej. Date:
Date App Rcvd:	Last Updated on:

With respect to the **Requested Effective Date** data fields (Req. Eff. Date:) of the **71** “Non-Update Record Display” print-out sheets reviewed:

- **32** requested either the first or the fifteenth of the month
- **36** had no entry
- **3** print-outs had a date which had neither the first or the fifteenth (or no entry) These dates were 6/30/99, 4/30/99 and 6/11/99 - The effective dates corresponding to two (2) of these entries were 1/1/0001* and on one (1) the effective date field was blank

With respect to the **Effective Date** data fields (Effective Date:) of the **71** “Non-Update Record Display” print-out sheets reviewed:

- **7** were effective either the first or the fifteenth of the month
- **15** had no entry
- **49** print-outs had a date entry of 1/1/0001*

***NOTE:** The Effective Date entries of 1/1/0001 appear to be incorrect or signify something other than an effective date of January 1, 2001. On-site examiners verbally requested an explanation regarding these entries from HMO Missouri Inc. staff but never received a clarification.

In addition, two (2) of the “Non-Update Record Display” print-out sheets had the following entered into the “Comments” section:

Comment #1 – “Per Carol send to UND (*underwriting*) without EFF (*effective*) date being checked. Applying for HMO so they have to take 05151999 since we RECD (*received*) APP (*application*) on 05041999.”

Comment #2 – “Applicant has the ALL (*Alliance*) HIPAA program now EFF (*effective*) 7/1/99. She wants to change to the Blue Choice HIPAA policy. Told her is she is in within 63 days of COBRA cancelled she could change but her EFF (*effective*) date would be 8/15/99. She would be without coverage from 7/1/99 to 8/15/99. K.O. 8/2/99”

In summary, HMO Missouri, Inc. continues to fail to recognize the HIPAA protections afforded “eligible individuals” pursuant to 45 CFR 148.120(a)(1)(ii), (i.e. the right to be enrolled promptly) and continues to process all applicants for individual BlueCHOICE coverage in the same manner with respect to their enrollment effective date.

Adverse Impact to Missouri Consumers

- “Eligible individuals” seeking to obtain guaranteed available coverage from HMO Missouri, Inc. are denied their right to be enrolled promptly, causing many of them to be without any form of health insurance coverage for up to 13 days.

Recommendation(s)

NOTE: Given HMO Missouri, Inc. has already been afforded an opportunity to mitigate this matter by discontinuing the business practice in question, and apparently did not, it is HCFA’s intent to pursue a civil monetary penalty against the company for the 71 apparent violations.

- HMO Missouri, Inc. should either:
 1. Submit evidence to HCFA that the business practice was in fact discontinued as described in the HMO Missouri, Inc. letter dated March 26, 1999, including evidence and a detailed explanation refuting the evidence collected through the market conduct examination; or
 2. Discontinue the business practice providing the appropriate evidence and documentation; and

Contact and provide an opportunity to all insureds enrolled in the BlueCHOICE program on a guaranteed available basis after March 26, 1999 to submit any claims incurred during the period of time which they had no health insurance coverage as a result of the “1st and 15th only” enrollment business practice. HMO Missouri, Inc. should then process and pay these claims pursuant to the terms of the BlueChoice policy.

Exception #7 - - Violation of 45 CFR 148.126

General Subject Area(s) - - Determination of an Eligible Individual

Background

HMO Missouri, Inc. requires an individual applying for a guaranteed available individual policy to have a letter from his/her previous employer certifying the applicant has exhausted COBRA or state continuation or that the applicant was not eligible for any continuation of coverage. Without this letter HMO Missouri, Inc. does not consider the application complete and will not continue processing the application.

Specific Violation

- **HMO Missouri, Inc. will not process an application for guaranteed available individual coverage without a letter from the applicant’s prior employer certifying that COBRA or other state continuation has been exhausted or the applicant was not eligible for any continuation.**

Federal Regulations found at 45 CFR 148.126 place the responsibility of determining the eligibility of an individual to guaranteed available coverage on the issuer. An issuer must exercise “reasonable diligence” in making the determination and is allowed to request additional information if the information provided by the applicant is “substantially insufficient.”

However, HMO Missouri, Inc.’s business practice of only accepting a certification letter from prior employers to confirm an applicant’s eligibility transfers the burden on the applicant to determine his or her eligibility. In addition, while a letter from a prior employer would be acceptable as evidence of eligibility, accepting only such a letter is inappropriate for the following reasons:

- 1) Requirement does not correctly reflect the requirements of 45 CFR 148.103(6) and, as a result, could force an employer to “certify” to an illegal act.

Federal Regulations found at 45 148.103(6) state that “If an individual has been **offered** the option of continuing coverage under a COBRA continuation provision or a similar State program, the individual has both elected and exhausted the continuation of coverage” (emphasis added). Eligibility for COBRA or other continuation is not sufficient. An individual who has been illegally denied his COBRA or other continuation rights would likely have great difficulty obtaining a “certification” from the employer admitting to the violation.

- 2) Requires a certification letter that employers are not under any legal obligation to provide.

The notice requirements of COBRA do not require employers provide any notices to those individuals not eligible for COBRA. Aggravating this lack of any legal requirements to provide such a notice is the reality that not all individuals separate employment on favorable terms (i.e. they are fired). Such individuals would likely have even greater difficulty in obtaining the requested certification.

- 3) For eligible individuals moving to Missouri from many other states, a letter from an employer would be irrelevant.

Many state continuation laws place the responsibility for notifying and providing for State continuation on the insurer, not the employer. In these cases a letter from the employer would be irrelevant.

Adverse Impact to Missouri Consumers

- Missouri consumers who are unable to obtain a certification letter from their previous employer regarding continuation of coverage, are denied their right to obtain a guarantee issued individual policy. This right is denied regardless of any other evidence supporting they meet requirements COBRA and/or other continuation requirements of an eligible individual as defined at 45 CFR 148.103(6).

Recommendation(s)

- HMO Missouri, Inc. should discontinue the practice of not processing an application for guaranteed available individual coverage without a letter from the applicant's prior employer certifying that COBRA or other state continuation has been exhausted or the applicant was not eligible for any continuation.

HMO Missouri, Inc. should allow individuals to provide other forms of evidence or attest to meeting the aforementioned requirement and then take the appropriate steps to confirm the information.

Background

HMO Missouri, Inc. is required to offer the one (1) individual product they market (BlueCHOICE) to eligible individuals. However, the information provided to the examiners does not confirm that HMO Missouri, Inc. determines the eligibility of each BlueCHOICE applicant and provides these individuals with information regarding all available coverage options.

Specific Violation

- **HMO Missouri, Inc. does not determine if all individuals applying for individual coverage are “eligible individuals” entitled to guaranteed available individual coverage.**

In addition, as a result of the failure to properly determine applicants, HMO Missouri, Inc. is not able to provide information regarding all available coverage options to all eligible individuals.

The information provided to the examiners indicates that HMO Missouri, Inc. guidelines require that all applicants be provided information regarding guaranteed available individual coverage.

Specifically, the company documents indicate that “A HIPAA-required product outline will be included with all fulfillment kits sent out; it details the programs available, eligibility requirements, and documentation required to enroll.”

While examiners were provided a BlueCHOICE brochure that describes HIPAA, HMO Missouri, Inc. also utilizes a separate “Application for HIPAA Required BlueCHOICE Coverage.” It remains unclear how an applicant obtains such a “HIPAA Required” application.

In addition, company documents state “Applicants who do not qualify for one of our regular underwritten products, or who are offered coverage with an amendment for an excluded condition or excluded family member, will be sent information with their denial/exclusion letter informing them of the availability of a HIPAA – required products for those who meet the specific criteria.”

In summary, based on the information provided the examiners, an applicant must request information on guaranteed available Blue CHOICE individual coverage. This request in turn prompts HMO Missouri, Inc. to begin the eligibility determination process.

Federal Regulations found at 45 CFR 148.126 place the responsibility of determining the eligibility of an individual to guaranteed available coverage on the issuer. An issuer must exercise “reasonable diligence” in making the determination and is allowed to request additional information if the information provided by the applicant is “substantially insufficient.”

HCFA further clarified issuers’ responsibilities in this regard through Program Memorandum 99-02 which notes the following as a practice that creates potential problems:

“An issuer does not attempt to identify an applicant as an eligible individual unless and until the applicant states he or she is seeking coverage on a guaranteed available basis, or the applicant is required to state other key words.”

The same bulletin goes on to state:

“An issuer does not exercise ‘reasonable diligence’ in making a determination...unless it makes a reasonable effort to determine whether any applicant for any type of coverage in the individual market...is an eligible individual, regardless of whether the individual knows or believes he or she has this status, and regardless of whether he or she specifically applied for a HIPAA product.”

HCFA further clarified the requirements of 45 CFR 148.126 in Appendix A of 45 CFR Part 150, Subpart C, *II. Basis for Imposition of Civil Monetary Penalties – Actions in the Individual Market*, d.(2) which describes the following practice as a failure to comply:

“Requires eligible individuals to specify their desire to invoke the requirements of part 148 or to explicitly request their rights under the law in order to obtain information about products available to them.”

Federal Regulations found at 45 CFR 148.120 requires that “...with respect to any eligible individual who requests coverage..” issuers must provide information regarding all coverage options and enroll the individual in any coverage option the individual selects. Given HMO Missouri, Inc. is not determining the eligibility of all applicants, it would be unable to inform those eligible individuals they did not properly determine of their option to obtain a guaranteed available policy.

Adverse Impact to Missouri Consumers

- HMO Missouri, Inc. applicants failing to request information on HMO Missouri, Inc. guaranteed available policies are denied their right to a determination of their eligibility for such coverage.
- Those applicants failing to request a determination, and who do in fact meet the definition of an eligible individual, are denied information to all the coverage

options available to them. Such applicants are forced to make an uninformed purchase decision (i.e. they are denied their right to a consider, and perhaps purchase, a policy without any preexisting condition limitation exclusions).

Recommendation(s)

- HMO Missouri, Inc. should determine if all applicants for individual coverage meet the definition of an “eligible individual” as defined at 45 CFR 148.103. Those meeting the definition should then be provided information about all available coverage options.

Exception #9- - Violation of 45 CFR 148.124(b)(2)(ii)(C)

General Subject Area(s) - - Certificates of Creditable Coverage – Required Information

Background

HMO Missouri, Inc. issues certificates of creditable coverage to individuals discontinuing coverage which identify Alliance BlueCross and BlueShield, BlueCHOICE and BlueCross BlueShield of Missouri as part of the letterhead.

Specific Violation

- **HMO Missouri, Inc. does not provide certificates of creditable coverage which clearly provides the name of the issuer.**

Federal Regulations found at 45 CFR 148.124(b)(2)(ii)(C) state that “The name,...of the issuer required to provide the certificate” be disclosed on certificates of creditable coverage provided to individuals discontinuing individual coverage.

While it can be argued that the name of the issuer does in fact appear on the certificates of creditable coverage, (on the letterhead), the intent of the “required information” requirements of 45 CFR 148.124(b)(2)(ii) is to clearly disclose the identity of the prior issuer. Individuals and issuers receiving HMO Missouri, Inc. certificates of creditable coverage are faced with the options of; 1) either accepting the individual who was issued the certificate had prior creditable coverage with one of three possible issuers or; 2) calling to confirm the precise identity of the prior issuer.

Adverse Impact to Missouri Consumers

- Creates unnecessary confusion and adds an unnecessary obstacle for individuals and issuers seeking to use the HMO Missouri, Inc. certificates of creditable coverage to confirm prior creditable coverage.

Recommendation(s)

- HMO Missouri, Inc. should clearly disclose it is the issuer on the certificates of creditable coverage it issues.

Final Page of Report

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January 17, 2001

John Allen O'Rourke, President
HMO Missouri Inc.
1831 Chestnut Street
St. Louis, Missouri 63103

RE: Response to August 1, 2000 Market Conduct Examination Report

Dear Mr. O'Rourke:

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) market conduct examination requirements found at 45 CFR 150.313(e)(3), this letter will convey the results of the Health Care Financing Administration's (HCFA) review of HMO Missouri Inc.'s August 30, 2000 response to the market conduct examination report of HMO Missouri Inc. dated August 1, 2000.

Specifically, the requirements of 45 CFR 150.313(e)(3) provide HCFA with the following four (4) response options to each issue identified in a market conduct examination report:

1. Concurrence with the issuer's position.
2. Approval of the issuer's proposed plan of correction.
3. Conditional approval of the issuer's proposed plan of correction, which will include any modifications HCFA requires.
4. Notice to the issuer that there exists a potential violation of HIPAA requirements.

With respect to any issues HCFA chooses to "Approve" or "Conditionally Approve" in this letter, should HMO Missouri Inc. not fulfill the requirements and/or take the appropriate corrective actions within the appropriate time frames, HCFA may pursue a Civil Monetary Penalty (CMP) with respect to those issues. In addition, HCFA will consider such a failure by HMO Missouri Inc. to be an aggravating factor as provided for at 45 CFR 150.312 and calculate any CMPs to the maximum amount allowed under the law.

Exception #1 - 45 CFR 148.120 Guaranteed Availability – Actively Marketed

Background - HMO Missouri Inc.'s marketing web site lacked information regarding the guaranteed availability of products to eligible individuals. HMO Missouri Inc. proposed to add this information within eight (8) weeks. A cursory review of the web site prior to the mailing of this letter indicated a link had been added.

HCFA Response – Approval of HMO Missouri Inc.'s proposed plan of action.

Exception #2 – 45 CFR 146.150(a)(1) – Guaranteed Availability – Small Employers

Background – Information reviewed during the examination indicated that HMO Missouri Inc. was not offering to small employers of 26 to 50 employees small group coverage on a guaranteed available basis. HMO Missouri Inc. indicated it does in fact offer coverage to all groups of 2 to 50 employees as required by HIPAA and indicated that particular advertising pieces reviewed by the on-site examiners that lead to this exception were targeted to the very small employers, that is, those employers with 2 to 25 employees.

HCFA Response – Accept response and concur with HMO Missouri Inc.'s position as there is no other evidence or indication of a problem in this area.

Exception #3 – 45 CFR 146.150(a) – Guaranteed Availability – Small Employers – Reduction in Agent Commissions

Background – HMO Missouri Inc. significantly reduced agents' commissions for sales of coverage to small employer groups of 2 to 50 which were not eligible for "preferred rates." In addition, such sales were not eligible to be included in agent "bonus program" calculations. HMO Missouri Inc. agreed in its August 30, 2000 response, and further clarified in a letter dated October 18, 2000, to use the same commission schedules for its group "HIPAA business" as is used for its "non-HIPAA business." In addition, "HIPAA business" will be included in bonus calculations. These changes would apply to new business beginning on or after January 1, 2001.

HCFA Response – Approval of HMO Missouri Inc.'s proposed plan of action.

Exception #4 – 45 CFR 148.120 – Guaranteed Availability – Individual Coverage – Reduction in Agent Commissions

Background – HMO Missouri Inc. significantly reduced agents' commissions for sales of guaranteed available individual policies. In addition, such sales were not eligible to be included in agent "bonus program" calculations. HMO Missouri Inc. agreed in its August 30, 2000 response, and further clarified in a letter dated October 18, 2000 to use the same commission schedules for its individual "HIPAA" policies as are used for its "non-HIPAA" policies. In addition, "HIPAA business" will be included in bonus calculations. These changes would apply to new business beginning on or after January 1, 2001.

HCFA Response – Approval of HMO Missouri Inc.'s proposed plan of action.

Exception #5 – 45 CFR 146.160 – Disclosure of Information

Background – Examination indicated HMO Missouri Inc. did not disclose as required by 45 CFR 156.160 the following information as part of the offer of coverage to small employers:

Premium Change Information
Renewability of Coverage
Preexisting condition exclusions

HMO Missouri Inc. indicated all the aforementioned required information is in fact disclosed as part of all its sales packets mailed or delivered to prospective groups.

HCFA Response – Conditional approval and concurrence provided HMO Missouri Inc. submits to HCFA within 30 days of the date of this letter example copies of the referenced sales packets and these sales packets confirm HMO Missouri Inc.'s claim of compliance.

Exception #6 – 45 CFR 148.120(a)(1)(ii) – Failure to issue coverage promptly

Background – HMO Missouri Inc. enrolled “eligible individuals” purchasing their individual BlueCHOICE product in the same manner as those individuals purchasing the product on an underwritten basis. That is, “eligible individuals” coverage only became effective on the 1st or 15th of the month. This practice did not comply with the requirements of HIPAA to enroll “eligible individuals” promptly and in a manner allowing them to arrange for seamless coverage. Prior to the market conduct examination, HCFA had received two (2) complaints regarding this practice. HMO Missouri Inc. agreed to mitigate any potential Civil Monetary Penalties (CMP) associated with these complaints by 1) paying any claims denied in error due to the practice and 2) discontinuing the practice. Given the market conduct examination indicated the practice had not been discontinued, HCFA began calculating an appropriate CMP.

At the request of the Health and Human Services Office of General Council, HCFA notified HMO Missouri Inc. of its plans to assess a Civil Monetary Penalty (CMP) regarding this matter and provided HMO Missouri Inc. an additional opportunity to explain why the practice was apparently not discontinued. After receiving HMO Missouri Inc.'s response in this regard, HCFA agreed to pend the assessment of a CMP in this matter.

HCFA Response – This matter is pending until HCFA conducts a follow-up targeted market conduct examination of the matter scheduled to be performed sometime during HCFA fiscal year 2001 which ends 9/30/01.

Exception #7 – 45 CFR 148.126 – Determination of Eligible Individuals

Background – Information reviewed during the examination indicated HMO Missouri Inc. will not process an application for guaranteed available individual coverage without a letter from the applicant's prior employer certifying that COBRA or other state continuation has

been exhausted or the applicant was not eligible for any continuation. HMO Missouri Inc. denied this was the company's practice but did agree to revise its HIPAA informational insert and its “*Application for HIPAA – Required Nongroup Coverage in the BlueCHOICE Individual Program*” to reflect that HMO Missouri Inc. will accept an attestation from the applicant regarding the exhaustion or unavailability of group continuation of coverage.

HCFA Response – Approval of corrective actions.

Exception #8 – 45 CFR 148.126 and 45 CFR 148.120 – Determination of Eligible Individuals and Providing Information About All Available Coverage Options

Background – Information reviewed during the examination indicated HMO Missouri Inc. does not determine if all individuals applying for individual coverage are “eligible individuals” entitled to guaranteed available individual coverage. As a result of this failure to properly determine all applicants, HMO Missouri Inc. is not able to provide information regarding all available coverage options to all eligible individuals. HMO Missouri Inc. denies this violation, indicating that staff members ask questions of all prospective enrollees regarding HIPAA eligibility and advise those individuals who may be “eligible” they may want to apply for both a regular and HIPAA product. In addition, HMO Missouri Inc. indicates each pre-sales packet includes an explanation of the criteria for HIPAA as a standard business practice.

HCFA Response – HCFA will issue a notice of violation. In summary, based on the information currently available to the agency, applicants must specifically apply for a guaranteed available product before their eligibility status is ever determined by the company.

Exception #9 – 45 CFR 148.124(b)(2)(ii)(C) – Certificates of Creditable Coverage – Required Information

Background – Certificates of creditable coverage issued by HMO Missouri Inc. reviewed during the examination indicated they did not clearly provide the name of the issuer, that is, HMO Missouri Inc. Specifically, all the HMO Missouri Inc. affiliated companies’ names appear in the letterhead. HMO Missouri Inc. concedes the point of the exception, but believes no individuals receiving such a certificate are placed in a position of disadvantage. HMO Missouri Inc. has offered to include a statement at the bottom of each certificate of creditable coverage explaining all underwriting companies’ names and DBAs.

HCFA Response - Approval of the proposed plan of correction provided HMO Missouri Inc. submits to HCFA an example copy of the revised certificates of creditable coverage within 30 days of the date of this letter.

Please direct any materials, information, or confirmations referenced in this letter that are required to be submitted to HCFA to Jorge Lozano of my insurance reform staff. In addition, if you have any questions please contact Jorge directly at (816) 426-5472 ext. 3120.

Sincerely,

///Signed///

Richard P. Brummel
Deputy Regional Administrator

CC: David Henley, Counsel, BC/BS of MO
Gale Arden, HCFA Private Health Insurance Group
Ruth Bradford, HCFA Private Health Insurance Group



June 22, 2001

Refer to:
ORA:
E 59R

David M. Henley
HMO Missouri, Inc.
1831 Chestnut Street
St. Louis, MO 63103

RE: BlueCHOICE Application Form # AMK-986 REV 6/01
HIPAA Information Sheet Form #AMK-875 REV 06/01

Dear Mr. Henley:

This letter conveys the results of our review of the above captioned forms.

At this time, the State of Missouri has not incorporated into law provisions and/or requirements that would bring Missouri State law into compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a result, the enforcement of the requirements of HIPAA in Missouri is presently the responsibility of this office.

The captioned forms submitted to this office for review have been accepted by this office as of this date with respect to those issues which evidence compliance with HIPAA according to current regulation. We have not enclosed stamped copies of the accepted forms, as this letter will serve as a record of our acceptance. Please be advised that this review does not replace the form review and approval procedures required by Missouri State insurance law.

Please note that in accordance with Title I of HIPAA, as codified at 42 U.S.C.A. § 300gg-22 and § 300gg-61 and regulations at 45 CFR 150.319, this department is allowed to take into account the insurer's previous record of compliance with respect to any situations which arise where the imposition of a Civil Monetary Penalty is warranted. Be advised that this notification of acceptance of the captioned form filing and your company's cooperation in this process will become a part of the record that will be maintained as evidence of your effort to comply with HIPAA.

If there are any questions or if discussion is desired, please contact Jorge Lozano of this office at (816) 426-5472, ext. 3120. Once again, thank you for your cooperation.

Sincerely yours,

///Signed///

Richard P. Brummel
Deputy Regional Administrator



June 29, 2001

Refer to:
ORA:
E 59R

David M. Henley, Attorney
HMO Missouri, Inc.
1831 Chestnut Street
St. Louis, MO 63103

RE: HMO Missouri Inc. (HMO MO) - Market Conduct Exceptions #6 & #8
1/17/01 HCFA Response to August 1, 2000 Market Conduct Examination
Report
1/10/01 HCFA Civil Monetary Penalty Notices
Your Letter dated June 19, 2001

Dear Mr. Henley:

This letter will serve to close the Centers for Medicare and Medicaid Services (CMS) (formerly the Health Care Financing Administration) market conduct examination of the captioned company.

Specifically, this agency is accepting HMO MO's proposed plan of correction as outlined in your letter dated June 19, 2001 and pursuant to Federal Regulations found at 45 CFR 150.325 we will discontinue plans to pursue a market conduct related Civil Monetary Penalty (CMP) with respect to these matters.

Our decision to close this market conduct review and not pursue a CMP at this time does not apply to any other issues, reviews or complaints that may be pending before CMS regarding HMO MO's compliance with the Health Insurance Portability and Accountability Act of 1996, or any other statute enforced by CMS. This decision also does not preclude further CMS complaint investigations or market conduct reviews of HMO MO. Any compliance matters arising from subsequent reviews or investigations will be addressed and resolved separately in accordance with the procedures and standards of the statute(s) and implementing regulations applicable to the matter raised.

In addition, our acceptance is based and contingent upon the following:

- 1) That an effective date of coverage beginning only on the 1st or the 15th of the month is no longer a requirement for any HMO MO applicant.

- 2) That HMO MO will use Application Form # AMK-986 REV 6/01 and the HIPAA Information Sheet Form # AMK-875 REV 06/01 in the manner outlined in HMO MO's letter. A copy of this agency's letter accepting the aforementioned forms is attached.

If there are any questions or if discussion is desired, please contact Jorge Lozano of this office at (816) 426-5472, ext. 3120. Once again, thank you for your cooperation.

Sincerely yours,

///signed///

Richard P. Brummel
Deputy Regional Administrator

Enclosure

CC: Gale Arden, Private Health Insurance Group, CMS
Ruth Bradford, Private Health Insurance Group, CMS
Paula White, Private Health Insurance Group, CMS